

1 JOHN K. VAN DE KAMP, Attorney General  
2 of the State of California  
3 ROBERT C. CROSS,  
4 Deputy Attorney General  
5 1515 K Street, Suite 511  
6 Sacramento, California 95814  
7 Telephone: (916) 324-5335

8 Attorneys for Complainant

9 BEFORE THE  
10 PODIATRY EXAMINING COMMITTEE  
11 BOARD OF MEDICAL QUALITY ASSURANCE  
12 DEPARTMENT OF CONSUMER AFFAIRS  
13 STATE OF CALIFORNIA

14 In the Matter of the Accusation ) No. D-3247  
15 Against: )  
16 BENNIE B. WEBER, D.P.M. ) STIPULATION  
17 218 West Lodi Avenue ) AND  
18 Lodi, California 95240 ) ORDER  
19 License No. E-1441, )  
20 Respondent. )

21 The parties hereto stipulate as follows:

22 1. Respondent is represented by his attorney,  
23 ROBERT K. CRAWFORD. Complainant is represented by its attorneys,  
24 JOHN K. VAN DE KAMP, Attorney General, ROBERT C. CROSS,  
25 Deputy Attorney General.

26 2. Respondent has been lawfully served with  
27 Accusation No. D-3247 and has filed a timely Notice of Defense  
28 to the charges contained therein.

3. The parties realize that they are entitled to  
a hearing under the Administrative Procedure Act, Government  
Code section 11500, et seq. The parties have been advised by  
their respective attorneys of their rights in such a hearing.

1 The parties waive such hearing and submit the matter to the  
2 Podiatry Examining Committee for decision pursuant to the  
3 terms of this Stipulation.

4 4. Although Respondent does not admit any specific  
5 allegation in the Accusation, Respondent does stipulate that  
6 a factual basis in part exists for issuance of the following  
7 Order.

8 5. In further consideration for this Stipulation and  
9 Order, the Podiatry Examining Committee agrees to close any and  
10 all other matters currently under investigation or prosecution  
11 regarding Respondent and/or his podiatric practice.

12 6. This document is not binding and of no legal  
13 significance unless and until it is approved and adopted by  
14 the Podiatry Examining Committee as a formal decision.

15 7. Based upon the foregoing, the Podiatry Examining  
16 Committee shall issue the following Order:

17  
18 \* \* \* O R D E R \* \* \*

19 1. Certificate No. E-1441, issued to Respondent  
20 Bennie B. Weber, is revoked. However, revocation is stayed  
21 and Respondent is placed on probation for five years upon the  
22 following terms and conditions.

23 2. As a part of probation, Respondent is suspended  
24 from the practice of podiatry for sixty consecutive days.  
25 Respondent may elect when suspension shall take place, but  
26 the suspension must be started within the first 15 months of  
27 probation. Respondent must notify the Podiatry Examining  
28 Committee in writing beforehand of the dates during which he

1 intends to serve his suspension. Not sooner than nine months  
2 from the effective date of this decision, Respondent shall be  
3 permitted to petition the Podiatry Examining Committee for  
4 waiver and/or modification of the suspension on the basis of  
5 exemplary compliance with the terms and conditions of his  
6 probation. The Podiatry Examining Committee agrees to reasonably  
7 consider such petition.

8           3. Within sixty days of the effective date of this  
9 decision, Respondent shall take and pass an oral clinical  
10 examination to be administered by the Podiatry Examining  
11 Committee or its designee. If Respondent fails this examination,  
12 Respondent must wait three months between re-examinations,  
13 except that after three failures, Respondent must wait one  
14 year to take each necessary re-examination thereafter. The  
15 Committee shall pay the cost of the first examination and  
16 Respondent shall pay the cost of any subsequent examinations.  
17 If Respondent fails to take and pass this examination within  
18 sixty days, Respondent shall cease the practice of podiatry  
19 until this examination has been successfully passed and  
20 Respondent has been so notified by the Committee in writing.

21           4. Within ninety days of the effective date of this  
22 decision, and on an annual basis thereafter, Respondent shall  
23 submit to the Committee for its prior approval an education  
24 program or course which shall be not less than 75 hours for the  
25 first year of probation and 25 hours for each subsequent year  
26 of probation. This program shall be in addition to the  
27 Continuing Medical Education requirements for re-licensure.  
28 Following the completion of each course, the Committee or its

1 designee may administer an examination to test Respondent's  
2 knowledge of the course.

3           5. Within one year from the effective date of this  
4 decision, Respondent shall pay to the Podiatry Examining  
5 Committee, the sum of \$5,000, or in the alternative, serve  
6 an additional six months of suspension to begin on the date  
7 this sum is due.

8           6. Respondent is prohibited from performing any  
9 surgery on a patient's first visit unless it is emergency in  
10 nature. Any such emergency surgeries shall be specially  
11 identifiable in a log book to be kept by Respondent as described  
12 hereinafter.

13           7. Respondent shall keep a log of all surgeries  
14 performed, which must include the date of the initial visit,  
15 the date of informed consent, the date surgery was performed,  
16 and the type of surgery performed. The above-mentioned surgical  
17 log, and all Respondent's patient charts, shall be subject to  
18 review during normal business hours upon reasonable notice by  
19 the Committee's medical consultant.

20           8. The Committee shall appoint a podiatrist to  
21 monitor Respondent's practice at Respondent's expense.  
22 Respondent may suggest candidates for monitor to the Committee;  
23 however, the Committee may, within the exercise of reasonable  
24 discretion, reject such candidates and appoint another board-  
25 certified podiatrist who shall be accepted by Respondent unless  
26 Respondent prevails in a Mandamus finding of actual bias,  
27 prejudice, or unsuitability. The monitor shall meet with  
28 Respondent approximately bimonthly or otherwise as the parties

1 may agree. The monitor shall review all of Respondent's  
2 surgeries. The monitor shall communicate with the Committee or  
3 its designee concerning his or her findings.

4 9. Within ninety days of the effective date of this  
5 decision, Respondent shall submit to the Committee for its  
6 approval a detailed plan for written and verbal informed consent  
7 that he will use in all surgical procedures, both soft tissue  
8 and osseus, including surgery of the nails and nail beds.  
9 Further, this plan shall include the name and address of a  
10 referral physician and podiatrist responsible for following  
11 Respondent's patients who require hospitalization in any facility  
12 wherein Respondent is not currently privileged to practice.

13 10. Insofar as is possible, each patient chart shall  
14 contain a record of the patient's chief complaint in the  
15 patient's own handwriting.

16 11. Respondent's medical records and diagnostic  
17 tests must meet the standard of the community. Specifically,  
18 Respondent's chart shall contain records of diagnostic tests  
19 performed and pertinent information relative to conservative  
20 therapy decisions.

21 12. Respondent shall obey all federal, state, and  
22 local laws and all rules governing the practice of podiatry  
23 in California.

24 13. Respondent shall submit quarterly declarations  
25 under penalty of perjury, on forms provided by the Committee,  
26 stating whether there has been compliance with all the conditions  
27 of probation.

28 14. Respondent shall comply with the Committee's

1 probation surveillance program.


2 15. Respondent shall appear in person for interviews  
3 with the Committee's medical consultant upon request at  
4 various intervals and with reasonable notice.

5 16. In the event Respondent should leave California  
6 to reside or to practice outside the State, Respondent must  
7 notify the Committee in writing of the dates of departure and  
8 return. Periods of residency or practice outside California  
9 will not apply to the reduction of this probationary period.

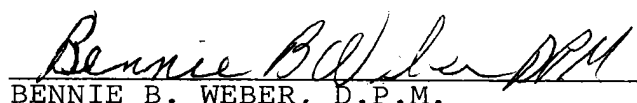
10 17. Upon successful completion of probation,  
11 Respondent's certificate will be fully restored.

12 18. If Respondent violates probation in any material  
13 respect, the Committee, after giving Respondent notice and the  
14 opportunity to be heard, may revoke probation and carry out the  
15 disciplinary order that was stayed. If an Accusation or Petition  
16 to Revoke Probation is filed against Respondent during Probation,  
17 the Committee shall have continuing jurisdiction until the  
18 matter is final, and the period of probation shall be extended  
19 until the matter is final.

20  
21  
22 Dated: 28 February 1985

  
ROBERT K. CRAWFORD, Esq.  
Attorney for Respondent

23  
24  
25  
26 Dated: 2/28/85

  
BENNIE B. WEBER, D.P.M.  
Respondent

27  
28 //

1 Dated: 2-28-85

JOHN K. VAN DE KAMP, Attorney General  
of the State of California

2  
3 By Robert Cross  
4 ROBERT C. CROSS  
5 Deputy Attorney General

6 Attorneys for Complainant

7 //

8 //

9 //

10 The above Stipulation is hereby adopted as the Decision  
11 of the Podiatry Examining Committee. This Decision shall become  
12 effective within thirty days.

13 Dated: 2/28/85

14 Godfrey F. Mix  
15 GODFREY F. MIX, D.P.M.  
16 President, Podiatry Examining  
17 Committee

18  
19  
20  
21  
22  
23  
24  
25  
26  
27 03576110-  
28 SA83AD0553

1 JOHN K. VAN DE KAMP, Attorney General  
of the State of California

2 ROBERT C. CROSS,  
Deputy Attorney General  
3 1515 K Street, Suite 511  
Sacramento, California 95814  
4 Telephone: (916) 324-5335

5 Attorneys for Complainant  
6  
7

8 BEFORE THE  
PODIATRY EXAMINING COMMITTEE  
9 BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA  
11

12	In the Matter of the Accusation	)	No. <u>D-3247</u>
	Against:	)	
13		)	
	BENNIE B. WEBER, D.P.M.	)	
14	218 West Lodi Avenue	)	
	Lodi, California 95240	)	<u>ACCUSATION</u>
15		)	
	License No. E-1441,	)	
16		)	
	Respondent.	)	
17		)	

18 Complainant, Carol Sigmann, alleges:

19 1. Complainant is the Executive Officer of the Podi-  
20 atry Examining Committee and makes this Accusation solely in such  
21 official capacity.

22 2. On August 3, 1971, respondent Bennie B. Weber,  
23 D.P.M., was issued podiatrist license number E-1441. Said li-  
24 cense is current and in good standing.

25 3. Business and Professions Code sections 2234(b),  
26 (c) and (d), provide that gross negligence, repeated negligent  
27 acts, and incompetence, respectively, are grounds for disci-  
28 plinary action.



1           4.    Business and Professions Code section 725 provides  
2   that repeated acts of clearly excessive treatment as determined  
3   by the standard of the local community of licensees is unpro-  
4   fessional conduct.

5           5.    Respondent Bennie B. Weber, D.P.M., is guilty of  
6   gross negligence, repeated similar negligent acts, incompetence,  
7   and excessive treatment. Respondent's license is therefore sub-  
8   ject to disciplinary action pursuant to Business and Professions  
9   Code section 2234(b), (c), and (d), and Business and Professions  
10   Code section 725. The particulars are as follows:

11           A.    DOROTHY P.

12           Dorothy P. was a 36-year old female when first seen by  
13   respondent in his office on 9/15/81 for an ingrown toenail  
14   on her right great toe. Respondent also noticed a callus on  
15   the lateral aspect of her left foot. Respondent performed  
16   the following procedures on the patient:

- 17           (1) Total matricectomy, right hallux;  
18           (2) Arthroplasty left fifth toe;  
19           (3) Osteotomy fifth metatarsal left foot.

20           Respondent's care of this patient was negligent, grossly  
21   negligent, incompetent, and clearly excessive as follows:

22           a.    Respondent performed surgery on the patient on  
23   the date of the initial office visit.

24           b.    Respondent failed to advise, consider or  
25   initiate conservative care prior to undertaking sur-  
26   gery:

27   ///

1 c. Respondent failed to obtain the patient's  
2 informed consent for the surgical procedures performed  
3 and failed to even inform the patient of the nature and  
4 extent of the surgery performed.

5 d. Respondent failed to perform necessary pre-  
6 operative laboratory work.

7 e. Respondent failed to maintain adequate records  
8 concerning this patient's surgical and post-surgical  
9 care.

10 f. Respondent failed to perform and/or record a  
11 history and physical examination on this patient prior  
12 to surgery.

13 B. VERNON M.

14 Vernon M. was a 56-year old male when first seen by  
15 respondent on 2/3/81, for ingrown toenails and calluses on  
16 both feet. Respondent performed a total of five surgical  
17 procedures on the patient consisting of total matricectomies  
18 on the initial visit to the first and second toes of the  
19 left foot, total matricectomies on nails three, four and  
20 five of the left foot six days later, total matricectomies  
21 on toes one and two of the right foot February 26, 1981,  
22 total matricectomies on toes three, four and five of the  
23 right foot March 12, 1981, and a bunionectomy on the right  
24 foot 6/12/81. Respondent's care of this patient was negli-  
25 gent, grossly negligent, incompetent, and clearly excessive  
26 as follows:

27 ///

- a. Preoperative X-rays were inadequate.
- b. Inadequate lab work was performed prior to surgery.
- c. Respondent failed to perform and/or record a physical examination and history prior to surgery.
- d. Respondent performed an excessive number of surgeries.
- e. Respondent performed surgery on the initial visit of the patient.
- f. Respondent failed to obtain the informed consent of the patient for the surgical procedures.
- g. Respondent failed to maintain adequate surgical and post-surgical records concerning the patient.
- h. Respondent failed to advise, consider, and initiate conservative care prior to resorting to surgery.

C. GERTRUDE S.

Patient Gertrude S. was a 77-year old female when first seen by respondent 6/14/82. She saw respondent for a callus and painful ingrown toenail on her left hallux. Respondent performed the following surgery on the patient at the time of her initial visit:

- (1) Akin osteotomy of the left hallux;
- (2) Removal exostosis from the left hallux;
- (3) Partial excision of bone left second toe.

Respondent failed to treat the ingrown toenail. Respondent committed the following acts of negligence, gross negligence,

1 repeated similar negligent acts, incompetence, and clearly  
2 excessive treatment as follows:

3 a. Respondent failed to treat the complaint for  
4 which the patient consulted him--i.e., ingrown toenail.

5 b. Respondent failed to obtain the patient's  
6 informed consent for the surgical procedures performed.

7 c. Respondent failed to perform and/or record an  
8 adequate history and physical examination prior to  
9 surgery.

10 d. Respondent failed to perform necessary pre-  
11 operative laboratory tests prior to surgery.

12 e. Respondent failed to immobilize the osteotomy  
13 site.

14 f. Respondent failed to consider, advise, and  
15 initiate conservative methods of care prior to under-  
16 taking surgery.

17 g. Respondent charged for a biomechanical study  
18 on this patient, although there is no evidence that  
19 such study was ever done.

20 h. Respondent failed to internally fix the  
21 osteotomy site or otherwise stabilize the osteotomy  
22 site.

23 D. JANE B.

24 Jane B. was a 47-year old female when first seen by  
25 respondent 9/4/81 for bunions. On 9/4/81, respondent  
26 performed surgery to the patient's right foot consisting of  
27 a neck osteotomy of the metatarsal and an osteotomy to

1 straighten the hallux. On 10/8/81, respondent performed a  
2 similar operation on the patient's left foot. With respect  
3 to both surgeries, respondent committed the following  
4 grossly negligent, negligent, incompetent, and clearly  
5 excessive acts:

6 a. The surgeries were unnecessary.

7 b. Respondent failed to advise, consider and  
8 initiate conservative methods of treatment before  
9 performing surgery.

10 c. Respondent failed to perform and/or record  
11 an adequate history and physical examination prior to  
12 surgery.

13 d. Respondent failed to perform necessary  
14 laboratory tests prior to surgery.

15 e. Respondent performed surgery on the first  
16 office visit.

17 f. Respondent failed to obtain the patient's  
18 informed consent before the surgery.

19 g. Respondent failed to internally fix or  
20 immobilize the osteotomy site.

21 E. GEORGE B.

22 George B. was a 87-year old male when first seen by  
23 respondent in his office, February 16, 1982. The patient  
24 complained of calluses on his feet. On the date of the  
25 initial visit, February 16, 1982, respondent performed  
26 transverse metatarsal neck osteotomies to the second,  
27 third, fourth and fifth metatarsals of the left foot.

1 Respondent's care of this patient was negligent, grossly  
2 negligent, incompetent, and clearly excessive as follows:

3 a. Respondent performed inadequate preoperative  
4 laboratory work.

5 b. Respondent failed to perform and record a  
6 physical examination and history prior to surgery.

7 c. Respondent failed to advise, consider, and  
8 initiate conservative treatment before performing  
9 surgery.

10 d. Respondent failed to inform the patient that  
11 he was going to operate on the patient's bones or that  
12 he was going to operate at all on the patient.

13 e. Respondent performed surgery on the initial  
14 visit of the patient.

15 f. There was no indication for the surgery  
16 performed.

17 g. The performance of four osteotomies on the  
18 patient's foot was per se, grossly negligent and  
19 incompetent.

20 h. Respondent failed to stabilize the  
21 osteotomies and sent the patient home in his street  
22 shoes.

23 F. JOANNE S.

24 Joanne S. was a 42-year old female when first seen by  
25 Dr. Weber in his office, August 12, 1980. Her chief  
26 complaint was a callus which she wished to remove from her  
27 left foot. Respondent performed a neck osteotomy to the

1 second metatarsal of the left foot on the initial visit.  
2 Respondent's care of this patient was negligent, grossly  
3 negligent, incompetent, and excessive as follows:

4 a. No history or physical examinations prior to  
5 surgery were performed and/or recorded.

6 b. Indequate laboratory work was performed prior  
7 to surgery.

8 c. Respondent performed surgery on the initial  
9 visit of the patient.

10 d. Respondent failed to obtain the informed  
11 consent of the patient for the surgical procedure. In  
12 fact the patient was unaware that her bone was operated  
13 on and was asked to sign a surgical consent only after  
14 surgery.

15 e. Respondent failed to advise, consider, and  
16 initiate conservative care prior to resorting to  
17 surgery.

18 f. Respondent failed to immobilize or otherwise  
19 stabilize the osteotomy.

20 g. Respondent performed the osteotomy too  
21 proximal in cortical bone.

22 ///

23 ///

24 ///

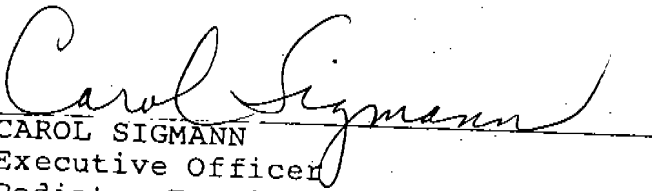
25 ///

26 ///

27 ///

1 WHEREFORE, complainant prays that a hearing be held on  
2 the matters alleged herein, and that following such hearing, the  
3 license of respondent be revoked, suspended or otherwise  
4 disciplined.

5 DATED: September 17, 1984

6  
7   
8 CAROL SIGMANN  
9 Executive Officer  
10 Podiatry Examining Committee  
11 State of California

12 Complainant  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

03576110-  
SA83AD0553